

Proposed Rules – Chapter 390-05 WAC
For public hearing and possible permanent adoption on April 27, 2006.

AMENDATORY SECTION (Amending WSR 96-09-015, filed 4/8/96, effective 5/9/96)

WAC 390-05-210 Definition--Contribution. (1) The term "contribution" as defined in RCW 42.17.020 shall be deemed to include, among other things, furnishing services or property or rights on a discriminatory basis or at less than their fair market value as defined in WAC 390-05-235, for the purpose of assisting any candidate or political committee. When such in-kind contribution of goods or services is provided, it shall be reported at its fair market value(~~(7)~~) per WAC 390-05-235 and, pursuant to RCW 42.17.640, the fair market value is the amount of the contribution to be allocated to the contributor in determining compliance with the contributor's contribution limit.

(2) ***Duplicating political advertising.*** The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or the authorized agent of a candidate or political committee is a contribution to the candidate or political committee.

(3) ***Consulting with a state, local or judicial candidate.*** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent is a contribution to such candidate. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent when:

(a) Any arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents; or

(b) An expenditure is made based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, the candidate's authorized committee or agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through (~~(or)~~), in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the (~~current~~

~~election cycle, (i) is or has been authorized to raise or spend over \$500 per election on behalf of the candidate, or (ii))~~
twelve months preceding the expenditure, is or has been an officer of the candidate's authorized committee; or

(d) The expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the candidate, the candidate's authorized committee or agent.

(4) **Consulting with a caucus political committee.** An expenditure, that does not qualify as a contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a caucus political committee or its agent is a contribution to such caucus political committee. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a caucus political committee or its agent when:

(a) Any arrangement, coordination or direction by the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that caucus political committee or one or more of the candidates supported by it or opposing one or more of those candidates' opponents; or

(b) An expenditure is made based on information about the caucus political committee's plans, projects or needs provided to the expending person by the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus with a view toward having an expenditure made; or

(c) An expenditure is made by, through ~~((or))~~, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the ~~((current election cycle, (i) is or has been authorized to raise or spend over \$500 per year on behalf of the caucus political committee, or (ii))~~ twelve months preceding the expenditure, is or has been an officer of the caucus political committee or another political committee financed, controlled or operated by the caucus; or

(d) The expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus.

(5) **Consulting with a bona fide political party.** An

expenditure, that does not qualify as an contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a bona fide political party or its agent is a contribution to such bona fide political party. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a bona fide political party when:

(a) Any arrangement, coordination or direction by the bona fide political party, its agent or a political committee financed, controlled or operated by the party is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that bona fide political party or one or more of the candidates supported by it or opposing one or more of those candidates' opponents; or

(b) An expenditure is made based on information about the bona fide political party's plans, projects or needs provided to the expending person by the bona fide political party or its agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through ~~((or))~~, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the ((current election cycle, (i) is or has been authorized to raise or spend over \$2,500 per year in nonexempt funds on behalf of the bona fide political party, or (ii)) twelve months preceding the expenditure, is or has been an officer of the bona fide political party or a political committee financed, controlled or operated by the bona fide political party; or

(d) The expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the bona fide political party, its agent or a political committee financed, controlled or operated by the bona fide political party.

(6) **Consulting with other political committees.** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee is a contribution to such political committee. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee when:

(a) Any arrangement, coordination or direction by the political committee, its agent or another political committee financed, controlled or operated by the committee is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or prior to an

expenditure being made by that person (~~((supporting))~~) benefiting that political committee; or

(b) An expenditure is made based on information about the political committee's plans, projects or needs provided to the expending person by the political committee or its agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through (~~((or))~~), in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the ((current election cycle, (i) is or has been authorized to raise or spend over \$5,000 on behalf of the political committee or another political committee financed, controlled or operated by the committee, or (ii)) twelve months preceding the expenditure, is or has been an officer of the political committee or another political committee financed, controlled or operated by the committee; or

(d) An expenditure is made by or in consultation with any person who, during the (~~((current election cycle))~~) twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the political committee, its agent or another political committee financed, controlled or operated by the committee.

Brief Explanation: According to RCW 42.17.020(15)(a), a "contribution" includes "an expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestions of, a candidate, a political committee, or their agents." This rule will help potential spenders determine whether their advertising expenditures are contributions and subject to any applicable limit, restriction or reporting.

NEW SECTION

WAC 390-05-500 Debate or forum. "Debate or forum" means qualifying events under RCW 42.17.020 (21)(b) where candidates are invited based upon predefined objective criteria, including where only one candidate in an uncontested race participates.

Brief Explanation: Under certain conditions, advertising for candidate debates or forums is not considered an electioneering communication. By defining "debate or forum" the rule provides guidance to sponsors of these types of events.

NEW SECTION

WAC 390-05-505 Electioneering communication exclusions.
(1) "Electioneering communication" does not include communications listed in RCW 42.17.020(21).

(2) "Electioneering communication" also does not include:
(a) Letters to the editor or comparable communications to news media described in RCW 42.17.020 (21)(c);
(b) Communications conveyed through web sites, e-mails, telephone calls, or in-person leaflet/pamphlet drops at street addresses; or
(c) Communications conveyed in a manner not specified in RCW 42.17.020(20).

Brief Explanation: *The rule specifies what types of advertising fall outside the definition of electioneering communication.*

NEW SECTION

WAC 390-05-510 General treasury funds. "General treasury funds" means a collective designation of all of the assets of an organization which furnish the means for defraying the necessary, usual, ordinary running and incidental expenses of an organization. General treasury funds are typically not derived from a special solicitation, effort, or receipt, but derive from regular, planned for, and ongoing revenue streams or sources.

Brief Explanation: *The names and addresses of organizations using general treasury funds for electioneering communications must be reported. Since the term is not defined in statute, the rule provides guidance to organizations engaging in campaign activity.*

NEW SECTION

WAC 390-05-515 Member. In determining whether a communication is to a "member" as that term is used in RCW 42.17.020 and 42.17.100, and for the purposes of RCW 42.17.105(8) and 42.17.640:

(1) The commission will examine whether the organization is a legitimate membership organization with common interest goals and objectives, taking into account such factors as the organization's permanence, structure and whether it has formal organizing documents, membership criteria and services it provides its members.

(2) With respect to the status of members of an organization, the commission will examine whether a valid, active relationship exists between the organization and its members or classes of members for purposes other than

influencing the outcome of an election, taking into account such factors as whether the members affirmatively accept membership and the rights and obligations conferred on members by the organization.

(3) If a membership organization and its members satisfy the criteria regarding "membership associations" and "members" established by the Federal Election Commission (FEC) in 11 C.F.R. Sec. 100.134(e)-(g), the commission will consider the organization and its members as qualifying for the exemption in RCW 42.17.020 (15)(b)(v) and (21)(g), unless the communication was not sent primarily to members. However, these FEC criteria are not the only indicators of legitimate membership organizations or valid members, a determination that will be made by the commission on a case-by-case basis as necessary.

(4) In determining whether an internal political communication is "primarily" limited to the members of an organization or political committee, the commission will consider whether any distribution to nonmembers is incidental and isolated.

Brief Explanation: *Political communications from a membership organization to its members are not considered contributions to the candidate, party or PAC benefitted, nor are they electioneering communications. This rule converts a long-standing interpretation defining "member" into a rule, as encouraged by the Administrative Procedure Act, RCW 34.05.230(1).*

NEW SECTION

WAC 390-05-520 Periodical. "Periodical" means a publication on paper that is serial in nature and appears or is intended to appear indefinitely at regular or stated intervals.

Brief Explanation: *One of the six forms of media in which electioneering communications are published is a periodical. In the absence of a statutory definition, the rule will assist advertising sponsors to comply with the law.*

NEW SECTION

WAC 390-05-525 Public service announcement. (1) "Public service announcement" means a communication meets all the following criteria. The communication is:

- (a) Designed to benefit or promote the community's health, safety or welfare or nonprofit community events;
- (b) Not selling a product or service;

(c) Sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization;

(d) Of primary interest to the general public and is not targeted to reach only voters or voters in a specific jurisdiction;

(e) Not coordinated with or controlled or paid for by a candidate's authorized committee or political committee;

(f) Subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing or otherwise publishing the communication including policies regarding length, timing and manner of distribution; and

(g) One for which the arrangements to include a reference or depiction of the candidate or candidates in the communication were made at least six months before the candidate became a candidate.

(2) Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach or awareness activities such as: Breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters.

Brief Explanation: *Defines a type of advertising that is excluded from the definition of electioneering communication to promote public understanding and compliance with the law.*

NEW SECTION

WAC 390-05-530 Funding sources for electioneering communications. (1) "Source of funds" means a person who contributes anything of value for the communication, including a loan, gift, advance, payment, pledge, or personal or professional services for less than full consideration.

(2) Goods, services, property or rights other than money or its equivalent are deemed to have a monetary value equivalent to their fair market value.

(3) "Source of funds" does not include those things of value specified in RCW 42.17.020 (15)(b).

Brief Explanation: *Persons sponsoring electioneering communications must report the sources of funds for the communication. This definition will assist sponsors in meeting their reporting*

obligation. The rule is modeled after the statutory definition of "contribution."